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Supreme Court, U.S.
FILED
SEP 9 1959
JAMES R. BROWNING, Clerk

No. 287

In the Supreme Court of the United States

OCTOBER TERM, 1959

PATRICK H. DEWITT, ET AL., PETITIONERS

v.

THE UNITED STATES

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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OPINION BELOW

The opinion of the Court of Appeals for the Fifth Circuit (Pet. A1–A25) is reported at 265 F. 2d 393.

JURISDICTION

The judgment of the Court of Appeals was entered on April 3, 1959 (Pet. A27) and a petition for rehearing was denied on June 10, 1959 (R. 213). The petition for a writ of certiorari was filed on August 8, 1959. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether, in order to obtain the loan guaranty and gratuity benefits of the Servicemen's Readjustment Act of 1944, as amended, the veteran must intend to occupy the premises (for which the loan is being sought) at the time that the loan is closed.

2. Whether the Court of Appeals was correct in holding that the only reasonable inference to be drawn from petitioners' admitted actions is that they deliberately withheld information from the lender so that the latter certified false information to the Government, causing erroneous payments of loan gratuities.

STATEMENT

This action was brought against petitioners under the False Claims Act (31 U.S.C. 231, *et seq.*) (R. 91). The Government alleged that petitioners caused false statements to be made and presented to the Veterans Administration, thereby inducing the Government to grant a loan guaranty and to pay a gratuity of $160.00[1] in forty-nine separate "sales" of real estate to veterans (Pet. 4–5, A2). With regard to twenty-nine of these sales—involved in the present petition—the parties entered into a stipulation as to the manner in which they were transacted (R. 134–135). These stipulated sales were executed as follows (Pet. A4–A5):

Petitioners, acting as a real estate agent, entered into a contract to sell a home to a veteran. The contract provided that it was subject to approval by the Veterans Administration. The veteran then applied to the Administration for a loan guaranty pursuant to the Servicemen's Readjustment Act (38 U.S.C. 694,

[1] The Servicemen's Readjustment Act of 1944, as amended (38 U.S.C. 694, *et seq.*), provided that the Government would guaranty loans made to veterans upon houses purchased in accordance with the provisions of the program. In addition, the Government would pay the lender a gratuity of 4% of the amount of the loan to be credited to the veteran's account. 38 U.S.C. 694(c).

et seq.). The veteran stated in his application (as required by the Act) that he intended to occupy the house for the purchase of which he sought the loan. The Government then issued a commitment to the lender that it would guaranty the loan. At some time after the issuance of this commitment, but prior to the closing of the loan, the veteran informed petitioners that he did not intend to occupy the house (R. 135). Upon receiving this information, petitioners agreed to purchase the house from him for a specified price. The loan was thereafter closed, and the house was deeded to the veteran who, unknown to the lender, simultaneously deeded it to petitioners. Petitioners subsequently sold the house for a profit to a non-veteran third party.

The lender, having been informed that the veteran had closed the sale, but being ignorant of his having simultaneously deeded the property to petitioners, sent the Veterans Administration a Certificate of Loan Disbursement (Pet. A14). This Certificate stated *inter alia* that the proceeds of the loan "were expended for the purposes described in the * * * Application," and that the "loan conforms otherwise with the applicable provisions of the act" (Pet. 4). In reliance upon the assertions in this Certificate, the Government guaranteed the loan and paid the lender a gratuity of $160.00.

The result was that the sale was financed almost entirely by a federally guaranteed loan plus a gratuity, even though neither the petitioners nor the subsequent non-veteran third party purchasers were entitled to those benefits (Pet. A5).

Petitioners moved for summary judgment on the grounds that: (1) the crucial time with respect to the veteran's intention to occupy the premises was the time he applied for the loan, and not at the time of closing; (2) petitioners had no knowledge that the lender would file a Certificate of Loan Disbursement with the Government, nor did they have any knowledge of its contents; (3) the Certificate of Loan Disbursement did not contain a statement that the veteran intended to occupy the premises (Pet. 5–6). The Government filed a counter-motion for partial summary judgment as to the twenty-nine sales that were stipulated (R. 130–131). The District Court denied the Government's motion and granted petitioners' (R. 142).

The Fifth Circuit unanimously reversed petitioners' judgment (Pet. A1–A15). As to the twenty-nine stipulated sales, the majority of the court, Judge Brown dissenting, directed the district judge to enter judgment for the United States because the terms of the stipulation "are so emphatic * * * there can be no genuine issue of fact" (Pet. A13).[2]

ARGUMENT

1. Petitioners' contention (Pet. 17–18) that no false claims were filed because under the Servicemen's Readjustment Act the veteran need not intend to occupy the home at the time the loan is closed is totally

[2] The Court of Appeals remanded 21 other claims for trial (Pet. A13–14) and affirmed as to the lender (Pet. A14). The Government is not petitioning with respect to these aspects of the decision below.

without merit. The clear and unambiguous statutory language requires that the veteran must intend to occupy the premises when the loan is disbursed. In several separate provisions, the Act defines eligibility for a loan guaranty in the terms that the loan be made to a veteran "to be used for purchasing residential property or constructing a dwelling *to be occupied as his home* * * *"[3] (Emphasis added.) The guaranty is not made by the Government until after the loan is disbursed and the lender has certified that the "proceeds of the loan were expended for the purposes described in the * * * Application"[4] (Pet. A7,

[3] 38 U.S.C. 694a(a) (Pet. A34). Similar language is used in Sec. 694a(b), providing for non-automatic loans, *i.e.*, prior approval loan guaranties where the veteran's dwelling is to be "occupied as his home."

[4] The certificate of commitment issued by the V.A. after the application for the loan is not a guaranty but merely assures the lender that, if the loan is subsequently made in accordance with the Act and regulations, the Government will guaranty it. This is spelled out in the Regulations (38 C.F.R. (1956) 36.4303):

> (d) A certificate of commitment shall entitle the holder to the issuance of the evidence of guaranty or insurance upon the ultimate actual payment of the full proceeds of the loan for the purposes described in the original report and upon the submission within 30 days thereafter of a supplemental report showing that fact and: * * *
>
> (4) That the loan conforms otherwise with the applicable provisions of the act and the regulations concerning guaranty or insurance of loans to veterans.
>
> (f) * * * No certificate of commitment shall be issued *and no loan shall be guaranteed* or insured unless the lender, the veteran, and *the loan* are shown to be eligible * * *.
>
> (g) Subject to compliance with the regulations concerning guaranty of insurance of loans to veterans, the

n. 5; see also 38 C.F.R. (1956) 36.4303). If the proceeds of the loan were not expended for the purposes described in the application (and required by the Act)—*i.e.*, if the house was not being purchased as a home for the veteran—then the Veterans Administration would never issue either the guaranty or the gratuity.

Petitioners' sole support (Pet. 18) for their contention that the veteran's intent to occupy the house ceases to be of importance after he has filed his application is the 1956 amendment to the Act.[3] This amendment requires the veteran to certify at the time of loan closing, as well as in his application, that he intends to occupy the house as his home (Pet. 18). Petitioner concludes (Pet. 18) from this amendment that, prior to 1956, the crucial time for the veteran's intent was the date on which he filed his application. The short answer is that the legislative history of the 1956 amendment *demonstrates that Congress did not* intend to change existing law, but was merely concerned with the procedure then in use to determine the veteran's intent. See H. Rept. No. 1971, 84th Cong., 2d Sess., pp. 5–6; S. Rept. No. 2489, 84th Cong., 2d Sess., p. 4. Congress clearly believed, in 1956, that the Act already required that the veteran

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certificate of guaranty, or the evidence of insurance credit will be issuable within the available entitlement of the veteran *on the basis of the loan stated in the final loan report or certification of loan disbursement.* * * * [Emphasis added.]

[3] Chapter 854, Sec. 1(7), 70 Stat. 914 (Pet. A37).

must intend to occupy the premises at the time that the loan is closed. *Ibid.*[6]

2. The court below held (Pet. A13), with regard to the twenty-nine claims included within the stipulation, that the terms of the stipulation were so emphatic that there was "no genuine issue of fact." Accordingly, the court directed the district judge to enter judgment for the Government on those claims. The rationale of this ruling is not, as petitioners suggest (Pet. 8), that persons who unwittingly or mistakenly cause false claims to be filed are liable under the False Claims Act, but rather that the only reasonable conclusion to be drawn from petitioners' actions (as described in the stipulation) is that they deliberately misled the Government in order to cause the proposed guaranties and gratuities to be executed.[7]

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[6] In addition, the analysis of the amendment by the Committee on Veterans Affairs of the House of Representatives stated (App., *infra*, p. 12):

"Previously the veteran was required to certify only at the time he made application for a guaranteed loan. This frequently resulted in the veteran changing his mind or selling his entitlement and closing the loan without intending to occupy it as his home *as is required by the Servicemen's Readjustment Act of 1944, as amended.*" (Emphasis added.)

[7] The majority opinion makes no reference to the spurious legal issue which petitioners are attempting to insinuate. To the contrary, the court grounds its decision squarely on its holding that "no genuine issue of fact" remained (Pet. A13). Moreover, the Government's brief in the court below based its contention that the court should enter judgment against petitioners on the twenty-nine stipulated claims on the ground that the "stipulation, together with the pleadings and the Court's finding that the lender had no notice of the purported resale to [petitioners] lead only to one reasonable conclusion—that the [petitioners] caused the lender to be misinformed so that the

The record fully substantiates this holding.

Petitioners knew, prior to or at the loan closing, that the veterans did not intend to occupy the houses which were the subject of the sales (R. 135). Upon receiving this information, petitioners agreed with the veteran to purchase his house (R. 135). In each instance, the veteran closed the loan and simultaneously deeded the house to petitioners (R. 135). These "sales" to the veterans were clearly shams for the purpose of deceiving the lenders and the VA. Petitioners could have easily purchased the property directly from the owner. However, in order to obtain a guaranteed loan, it was necessary to have the veteran's name appear as the borrower, and for this reason the property was deeded to him for a few moments.

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lender would transmit the misinformation to the VA and thereby induce it to guarantee the loan. This evidence leaves no genuine issue of material fact * * *." Government's Brief, p. 42, filed in the court below in No. 17,101, *United States* v. *Patrick H. DeWitt, et al.*, 265 F. 2d 393 (C.A. 5).

[8] Petitioners contend (Pet. 15–16) that, because the Government could not appeal from the district judge's order denying its motion for summary judgment, the Court of Appeals was disabled from ordering judgment for the Government, and was obligated, instead, to remand the cause to the district judge for further disposition. But it is not necessary for an appellate court to remand a cause for trial when there is no factual dispute which would justify a judgment for the appellee. *Forged Steel Wheel Co.* v. *Lewellyn*, 251 U.S. 511, 516; *United States* v. *National Wholesalers*, 236 F. 2d 944, 950 (C.A. 9), certiorari denied, 353 U.S. 930; *Hahn* v. *Padre*, 235 F. 2d 356 (C.A. 9); and Moore's *Federal Practice* (1953 ed.) par. 56.13[3]. The facts stipulated by petitioners establish beyond doubt that they violated the False Claims Act, and nothing would be gained by requiring a trial.

After the closing, petitioners informed the lenders that the sale had been consummated, but they concealed the fact that the property had been immediately deeded over to them. The obvious reason for their concealment of this information was to prevent the V.A. from learning this critical fact and, consequently, refusing to guaranty the loan.

Petitioners' contention (Pet. 12–14) that they did not know that the lender was required to file a Certificate of Loan Disbursement, or comparable document, after the loan closing is wholly belied by the careful manner in which they tailored the information they sent to the lender, in order to make it appear that the loan qualified for a federal guaranty. Petitioners knew that the loan had not yet been guaranteed at the time of closing, and it was manifest that it would not be guaranteed until the Veterans Administration was informed that the loan had been properly disbursed. They withheld the significant information that would have prevented the issuance of the guaranty, *i.e.*, that, simultaneous with the closing, the houses were deeded to petitioners themselves.

There is only one reasonable interpretation of petitioners' admitted actions—that they deliberately supplied the lender with false information in order to deceive the Government. In these circumstances, there is no need to have a trial on the issue of petitioners' intent. *United States* v. *National Wholesalers*, 236 F. 2d 944 (C.A. 9), certiorari denied, 353 U.S. 930; see fn. 8, *supra*.[9]

[9] In any event, it is not essential to show an intent to defraud the Government. Proof of petitioners' knowingly making false

3. Finally, petitioners' argument (Pet. 16–17) that the Certificate of Loan Disbursement does not purport to state that the veteran intended to occupy the house is footless. The Certificate stated that the proceeds of the loan had been expended for the purposes described in the application, and that the loan conformed with the applicable provisions of the Act. Since the application stated that the loan would be used to purchase residential property to be occupied by the veteran, the loans here were not, in fact, expended for that purpose. Moreover, the veteran's intent immediately to "resell" the property made him ineligible for the loan, and so it was not made in conformity with the Act. For both of these reasons, the Certificate was false and constituted a false claim against the Government.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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SEPTEMBER 1959.

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representations on a material matter is sufficient to establish a violation of the False Claims Act. *United States* v. *Toplemann*, 141 F. Supp. 677, 683 (E.D. N.C.), reversed on other grounds, 242 F. 2d 359 (C.A. 4), reversed, 356 U.S. 595. See, also *Claflin* v. *Commonwealth Insurance Co.*, 110 U.S. 81, 95; *Pence* v. *United States*, 316 U.S. 332, 339.

APPENDIX

COMMITTEE ON VETERANS' AFFAIRS, HOUSE OF REPRESENTATIVES

OLIN E. TEAGUE, *Chairman*

AMENDMENTS OF 1956 TO THE VETERANS' ADMINISTRATION LOAN GUARANTY PROGRAM

PUBLIC LAW 898

TITLE: To amend title III of the Servicemen's Readjustment Act of 1944, as amended, and for other purposes.

ANALYSIS: Amends the World War II GI Bill of Rights (Public Law 346, 78th Congress) by providing in the loan title (title III) that:

1. Where a veteran loses the home that he has purchased with the assistance of a VA-guaranteed loan, by condemnation for public use, by fire, or other natural hazards, or has disposed of the home for reasons devoid of fault on his part, the veteran may, upon paying off the outstanding loan, have until January 31, 1965, to obtain a new GI-guaranteed loan for the purchase of a home. Prior to this amendment, veterans of World War II could obtain reinstatement of entitlement only so long as the Loan Guaranty Program was in existence for this class of veterans, namely, until July 25, 1957. Since the program for the Korean veterans runs until January 31, 1965, and the VA will have a Loan Guaranty Division in operation for those veterans, the inclusion of the World War II veterans for reinstatement of their entitlement will not increase the administrative cost of the

program and will afford World War II veterans relief.

2. The reasonable value to be paid by a veteran for a property shall be established by the Administrator of Veterans' Affairs. Prior to this amendment, the reasonable value was determined by a proper appraisal made by an appraiser designated by the Administrator. The law now places the responsibility of establishing the reasonable value on the Administrator, thereby conforming to the policies and procedures previously adopted by the VA.

3. The veteran purchaser shall certify, at the time application is made for a guaranteed loan and at the closing of the loan, that he intends to occupy the property as his home. Previously the veteran was required to certify only at the time he made application for a guaranteed loan. This frequently resulted in the veteran changing his mind or selling his entitlement and closing the loan without intending to occupy it as his home as is required by the Servicemen's Readjustment Act of 1944, as amended.

4. When a veteran sells his home, the veteran and the prospective buyer can make application to the Administrator for acceptance of the second buyer, thus relieving the original veteran of liability to the Administrator for the guaranteed loan. The prospective buyer does not have to be a veteran to be accepted by the Administrator. The requirements are that:

A. the loan be current,

B. the purchaser of the property from the veteran has obligated himself by contract to purchase the property and assume full liability for the balance of the loan remaining unpaid, and,

C. he qualifies from a credit standpoint to the same extent as if he were an eligible veteran.

Prior to amendment, the veteran remained liable to the Administrator for the guaranteed loan until it was paid in full and if the second purchaser defaulted and a deficiency claim was established, the VA looked to the original veteran purchaser for repayment rather than the second buyer.

5. Provides for entitlements to be reinstated where a veteran reenters the service, sells his home, and pays off the VA-guaranteed loan, due to being transferred by the Armed Forces. Prior to amendment, the veteran reentering the service and disposing of his home due to being transferred could not have his entitlement reinstated. This amendment to the law will place the reenlisted veteran on a parity with veterans in private industry.

6. The Loan Guaranty Program for World War II veterans is extended to July 25, 1958. The program for World War II veterans was scheduled to expire on July 25, 1957.

7. The Administrator is authorized to process applications filed on or before July 25, 1958, provided the processing is completed on or before July 25, 1959. The law previously provided that the loan must be made within the life of the program and, as it takes approximately 6 months to process a loan for new construction, this would mean that without this amendment no applications could be filed after January 1, 1958. This amendment authorizes the Administrator to accept applications from qualified veterans until July 25, 1958, and continue with their processing for 12 months.

REPORTED: In House, March 28; H. Rept. 1971; in Senate, July 11, 1956; S. Rept. 2489.

PASSED: House, April 23; Senate, July 24, 1956.

APPROVED: August 1, 1956.

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